

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	WC Docket No. 12-375
Rates for Interstate Inmate Calling Services)	
)	

**RESPONSE OF THE
ALABAMA PUBLIC SERVICE COMMISSION**

The Alabama Public Service Commission (“APSC”) submits the following reply to the Response of Global Tel*Link Corporation (“GTL Response”) which was filed on October 1, 2015.¹ The GTL Response incorrectly concluded that Mr. Baker violated the Order issued by the Federal Communications Commission (“FCC”) on September 21, 2015 (“Order”) and the measures established by the APSC. The measures implemented by the APSC are an appropriate and sufficient response to the violation of the Inmate Calling Service Protective Order.²

Requirements and Prohibitions of the Order

The Order directed “Mr. Baker and the [APSC] to provide... any additional information, beyond that provided in Mr. Baker’s letter of July 17, 2015, that is necessary to give a full and detailed explanation of this matter....” Order at 3. While Mr. Baker did not intend for his e-mail of September 22, 2015 to be his official response, he certainly was clearly authorized, even directed, to provide this additional information. In fact, if he chose to, Mr. Baker would be allowed

¹ This response is submitted on behalf of the APSC and its employee, Mr. Darrell Baker.

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Protective Order, 28 FCC Rcd 16954 (Wireline Comp. Bur. 2013) (“Protective Order”).

to make an additional submission pursuant to the express wording of the Order. Order at 4 (stating that “Mr. Baker and the [APSC] may reply by October 6, 2015”).

GTL points to the Order’s prohibition on Mr. Baker “from participating further in this proceeding.” GTL Response at 1 (citing Order at 4). Clearly, in the context of the Order, this prohibition refers to the substantive filings related to the issues in *In the Matter of Rates for Interstate Inmate Calling Services*. The FCC in no way prohibited Mr. Baker from responding to the Order. In fact, as described above, the FCC Order directed Mr. Baker to respond to the matters addressed herein. Even if the Order had not directed Mr. Baker to respond, fundamental fairness dictates that an individual who is the subject of this type of investigation be allowed to respond.

APSC Measures

On July 27, 2015, the APSC Staff, including Mr. Baker, engaged in a conference call with the FCC regarding Mr. Baker’s violation of the Protective Order. During that call, John Garner, Executive Director of the APSC, outlined the APSC’s remedial actions which included prohibiting Mr. Baker from submitting future filings in WC Docket No. 12-375. The intent of this measure was to prevent Mr. Baker from making future filings regarding substantive issues under consideration in the FCC’s pending proceeding regarding inmate calling services until such time as there was resolution of the matters related to the violation of the Protective Order. Mr. Baker has fully complied with the letter and spirit of that prohibition.

Although it was not specifically discussed during the conference call with the FCC, the APSC never intended for the remedial measures imposed to prevent Mr. Baker from responding to the FCC regarding the violation of the Protective Order, particularly if requested or ordered to do so by the FCC. Clearly, based on the directive in the Order, the FCC also did not interpret the

APSC measures as prohibiting a response from Mr. Baker regarding the factual issues involved with the violation of the Protective Order.

GTL's interpretation of the APSC's measures would suggest that the FCC, by directing Mr. Baker to respond, was inviting Mr. Baker to violate the APSC's remedial measures by responding to the Order. This interpretation defies common sense. Although the restrictions implemented by the APSC refer to WC Docket No. 12-375, they were not, as previously noted, envisioned to extend to the FCC's separate inquiry concerning the Protective Order also being conducted under that same Docket number. In fact, the APSC anticipated that the FCC's inquiry regarding the violation of the Protective Order would likely be conducted under a separate and distinct Docket designation.

GTL stated in its response that when Ms. Engledow e-mailed Mr. Baker to inform him of the Order, she also included John Garner, the APSC Executive Director, as a recipient on the email. Apparently, like Ms. Engledow, GTL assumed that "john.garner@psc.alabama.gov" was the email address of the APSC Executive Director. GTL suggested that because Mr. Baker omitted the email address john.garner@psc.alabama.gov from his e-mail response that he must have known that his response violated the APSC's remedial measures. *See* GTL Response at 2. What Ms. Engledow and GTL do not know is that Mr. Garner does not have an email account that is utilized for work related matters. Mr. Baker is, however, well aware of that fact. As such, the omission of the noted email address from Mr. Baker's response to Ms. Engledow has no bearing on Mr. Baker's intentions, other than to show that he was aware that such an address was not associated with a working email account.

The foregoing explanations conclusively demonstrate that there was never any intention to deny Mr. Baker the opportunity to further explain the circumstances surrounding the violation of the Protective Order, particularly when directed to do so by the FCC. As such, Mr. Baker has not violated the APSC's remedial measures.

Not Inexplicable Ex Parte Communication

GTL stated that Mr. Baker "inexplicably sent an ex parte communication to Lynne Engledow." GTL Response at 1. Mr. Baker was, however, responding to an e-mail sent by Ms. Engledow with the Order attached. It is hardly inexplicable that Mr. Baker would do so, particularly when the attached Order directed him to respond.

Although GTL suggests that Ms. Engledow was required to file this "ex parte communication in the record," ECFS indicates that Mr. Baker's e-mail response was filed as a "letter."³ If Ms. Engledow is in fact the person who filed this document,⁴ she appears to have viewed the e-mail as Mr. Baker's response to the Order and, for some reason, chose to file it on ECFS on behalf of the APSC rather than ask APSC to file it. As such, there was no ex parte presentation. Although not intended as an official response by Mr. Baker, his email in effect became such a response due the manner in which it was processed by the FCC. Therefore, Mr. Baker's email is not an inexplicable ex parte communication, but rather a filing in response to a directive by the FCC as is currently reflected on the ECFS.

Just, Reasonable, and Fair Rates for Inmate Calling Service

Mr. Baker has devoted considerable time and energy to the FCC's proceeding to establish just, reasonable, and fair rates for inmate calling service ("ICS"). He has spent countless hours

³ ECFS screen shot attached as Exhibit A.

⁴ No one from the APSC, including Mr. Baker, filed this e-mail on ECFS, even though the name of the filer is shown as "Alabama Public Service Commission." As of the date of this filing, the APSC does not know who filed this e-mail on behalf of the APSC.

reviewing documents, studying the industry, and developing concepts to promote fair rates. ICS reforms, and the work of Mr. Baker, threaten the excessive profits of GTL. As such, GTL is taking advantage of Mr. Baker's filing mistake to attempt to reduce his credibility and detract from the substance of his prior filings. *See* GTL Response at 4. If GTL wanted to address the validity of Mr. Baker's prior filings, it had ample opportunities to do so during the ICS proceeding.

Mr. Baker made a mistake. The APSC has taken actions to remedy that mistake. GTL's motive in this matter appears less about the violation of the Protective Order and more about seizing an opportunity to attack an individual who has championed the ICS reform effort.

Conclusion

The APSC recognizes the seriousness of this mistake that led to the violation of the Protective Order and has taken steps to ensure that there will be no future violations. Rather than focus on that violation and absolute compliance with the Protective Order going forward, GTL's Response dwells almost entirely on an e-mail by Mr. Baker that was processed as a response to the Order. Even though Mr. Baker did not intend his email to be such a response, the fact that it has been treated as such is neither a violation of the Order nor a violation of the APSC's remedial measures. Indeed, the express provisions of the Order directed Mr. Baker to respond.

In reaching a conclusion in this matter, the APSC urges the FCC to focus on the prior, actual violation of the Protective Order which was a hasty mistake by an APSC employee who has devoted himself to this cause. Perhaps more importantly, great weight should be given to the fact that there have been no further instances of non-compliance with the terms of the Protective Order. Indeed, the remedial measures implemented by the APSC address the real issues in this cause and are adequate to ensure that there will be no future violations of the Protective Order. All relevant APSC Staff members, including Mr. Baker, have been instructed on these remedial measures and

complied with them. The APSC asks that the FCC affirm the actions taken by the APSC as the proper response to this violation and continue with its efforts to reform ICS.

Respectfully submitted,

/s/ John A. Garner

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October 6, 2015

Exhibit A

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